

MUSLIMS' INHERITANCE LAW IN MINDANAO – PHILIPPINES: A GUIDE FOR BEGINNERS

THESIS

**Presented to
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Graduate School of Muhammadiyah University of Surakarta
In Partial Fulfilment of the requirements prescribed
In Masters' Degree in Islamic Law**



By

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Dengan ini kami menilai tesis tersebut dapat disetujui untuk diajukan dalam sidang ujian tesis pada Program Studi Hukum Islam Universitas Muhammadiyah Surakarta.

Wassalamu 'alaikum warohmatullahi wabarokatuh.

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has been examined for all revisions and corrections recommended
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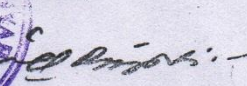
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Ms. Aliah Maruhom Pumbaya

MOTTO

﴿016:043﴾  “... فَسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ”

MEANING IN ENGLISH LANGUAGE

“... So, ask the people (having the knowledge) of the Reminder, if you do not know.”
(016:043)

MEANING IN BAHASA INDONESIA

“... Maka bertanyalah kepada orang yang mempunyai pengetahuan jika kamu tidak mengetahui.”(016:043)

MEANING IN TAGALOG LANGUAGE

“...kaya, magtanong sa mga taong nakakaalam kung hindi niyo alam.”(016:043)

MEANING IN MERANAO DIALECT

“... Na isha – an niyo ko adun a Sabot iyan o Sukano na di niyo katawi.”(016:043)

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DEDICATION

I wish to dedicate the fruit of my humble work to the following:

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Ms. Aliah Maruhom Pumbaya

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LIST OF ACRONYMS

1. *A.R.M.M.* : Autonomous Region in Muslim Mindanao
2. *CB* : Consanguine brother
3. *CPU* : Consanguine Paternal Uncle
4. *CS* : Consanguine Sister
5. *GB* : German Brother
6. *F* : Father
7. *G.R.P.* : Government of Republic of the Philippines
8. *GF* : Grandfather
9. *GM* : Grandmother
10. *GPU* : German Paternal Uncle
11. *GS* : German Sister
12. *H* : Husband
13. *M* : Mother
14. *M.I.L.F.* : Moro Islamic Liberation front
15. *M.N.L.F.* : Moro National Liberation Front
16. *M.O.A. A.D.* : Memorandum of Agreement for Ancestral Domain
17. *M.S.U.* : Mindanao State University
18. *P.B.U.H* : Peace be upon him
19. *P.D. 1083* : Presidential Decree 1083
20. *R.A.* : Radiallahu Anhu
21. *S.A.W.* : Salla Ilahu Alaihi Wa Sallam
22. *S* : Son

- 23. *SD* : Son's Daughter**
- 24. *SCPU* : Son of Consanguine Paternal Uncle**
- 25. *SGPU* : Son of German Paternal Uncle**
- 26. *SS* : Son's Son**
- 27. *S.W.T.* : Subhanahu Wa Taala**
- 28. *UB* : Uterine Brother**
- 29. *U.M.S.* : Universitas Muhammadiyah Surakarta**
- 30. *US* : Uterine Sister**
- 31. *W* : Wife**

LIST OF ABBREVIATIONS

1. Art. iii : this means “article 3”. “Arts.” Is the plural of Articles.
2. e.g. : is an abbreviation for the Latin words *exempli gratia*, which mean “for the sake of Example. It may also stand for “example given”.
3. et al. : this means “and others” (*et alii*)
4. Fig. 1 : this means “Figure 1”. “Figs.” is use for figures.
5. Ibid. : the term *ibid.* is the abbreviation of the Latin term *ibidem* meaning “the same”. It is used in foot notes in order to avoid the repetition of the reference information immediately preceding. When referring to the same work and page it is used alone. To this abbreviation however, must be added the new page reference or the new volume number and page reference.
6. Infra : this means “below”.
7. i.e. : is an abbreviation for the Latin words *id est*, which mean “that is”. It may also stand for “in essence”.
8. Loc. Cit. : this is the abbreviation of the Latin term *loco citato*, meaning “the place cited”. It is used when a second but non – consecutive reference is made to the exact material previously cited with the same page and volume but with intervening entries.

9. **Op. Cit.** : this is the abbreviation of the latin term *Opera Citato*, meaning “the work cited”. This is used where a footnote reference has been completely given previously and others follow closely but with some intervening citations. The author’s family name only must be given first to identify the “work cited” followed by a comma and then by the page or pages as the case may be.
10. **p. 6** : this means “page 6.”, “pp.” stands for pages.
11. **pp. 10 – 15** : this means “pages 10 to 15 inclusive”.
12. **pp. 7 f.** : this means “page 7 and the following page.” This is also written “pp. 7 et seq.”.
13. **vs.** : this means “verse.” “vss.” is used for verses.
14. **Vol. III** : this means “Volume 3”. “Vols.” is used for volumes.
15. **Sec. 8** : this means “Section 8.” “Secs.” is used for sections.
16. **Supra** : this means “above”.

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ABSTRACT

This study was generally design to simplify one of the complex branches of Islamic Law (Shari'ah) – Inheritance. The main objective of this study is to discover and explore the Muslims' Inheritance law in Mindanao – Philippines as a guide for beginners. Although Philippines is Christian dominated country, the Code of Muslim Personal Laws of the Philippines also known as P.D. 1083 has been introduce in 1977. Before that, there was not even a single set of comprehensive codification of rules available on Islamic law specifically on Islamic law of Inheritance for the Muslims in Mindanao – Philippines in general. Due to lack of moral teachings and learnings, lack of awareness and lack of English textbooks and review materials on Islamic Inheritance in Mindanao - Philippines, the researcher chooses this topic rather than any other because it has been neglected and because it has been discussed but not properly or fully.

This study seeks to answer the following questions, namely: 1) What are the Muslims' Inheritance laws in Mindanao - Philippines?; 2)What are the Islamic Rulings on Muslims' Inheritance laws in Mindanao - Philippines?; 3)What are the requisites of succession for Muslims' Inheritance laws in Mindanao - Philippines? and 4)What are the Procedures of Succession on Muslims' Inheritance law in Mindanao - Philippines? This study uses conceptual approach, statute approach and legislation approach to seek information in order to answer the research questions.

To answer the problems mentioned above in this study scientifically, hence the researcher used the following data sources: first, the data sources which are adopted as a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines and from Holy Qur - an and Prophetic traditions (Hadith), Qiyas and Ijma on Islamic law of Inheritance; Second, the data sources which are adopted as a results of study through many books, literatures, magazines, journals, newspapers, and thesis. Third, the data sources which are explanations from primary and secondary materials such as encyclopedia and dictionary. The qualitative data taken from the data sources are analysed through logical analysis. The analytical tools used are as follows: first, legal interpretation; Second, theological interpretation; and finally, juridical analysis.

The result shows that the *Muslims' Inheritance law in Mindanao – Philippines* was codified and became a binding law in 1977. The codification of Muslim Personal Laws is one of the greatest achievements of the Muslims in the Philippines. A total of 47 codified Islamic laws on Inheritance can be found in Book III of Presidential Decree 1083 otherwise known as The Code of Muslim Personal Laws of the Philippines. These are from article 89 to article 136. *The Islamic Rulings on Muslims' Inheritance law in Mindanao - Philippines* are commandments of Allah (S.W.T.). There are thirty-five verses of the Quran which refer to Mirath or its derivatives in one form or the other. There are 3 main verses in the Quran giving specific details of inheritance shares (4:11-12, 4:176). At least seven verses (2:180-182, 2:240, 4:33, 5:106-107) deals directly to testamentary disposition. Some of the Islamic rulings are taken from Prophetic Traditions, Qiyas, Ijma and Ijtihad like that of Special Cases. *The Requisites of Succession for Muslims' Inheritance Law in Mindanao – Philippines* is that the death of the decedent is ascertained; the successor is alive at the time of the death of the

decedent; and the successor is not disqualified to inherit. *The Procedures of Succession on Muslims' Inheritance Law in Mindanao – Philippines* is that under the Code of Muslim Personal Laws of the Philippines, the order of preference of claims mentioned in Article 135 and Procedures for distribution of estate is as follows: “The estate of a decedent shall be applied to claims and charges in the following order: (a) Unpaid taxes; (b) Reasonable funeral expenses; (c) The expenses for probate, administration and other judicial expenses; (d) The debts of the decedent; (e) The legacies to the extent of the disposable one-third; (f) The distribution of shares among heirs; and (g) Unpaid dower.” When distributing shares, we encounter four main situations, namely: Inheritance is distributed only amongst Dhul-Fard (Primary Heirs); Inheritance is distributed amongst Dhul-Fard and Al-Asabat Nasabiyyah; Inheritance is distributed only amongst Al-Asabat Nasabiyyah and Inheritance is distributed amongst Dhawul-Arham. Finally, if there are no distant kindred or still some residue left, then it goes to Bait-ul-Maal. Partition and Settlement of Special Cases on Muslims' Inheritance Law in Mindanao - Philippines varies depending upon on the case may be. It is important to note that if there are differences of opinions among the Orthodox School (madhahib) on Islamic Inheritance, the degree of authenticity of the Islamic evidence is given with much preference over the opinions of the madhahib. Therefore, although most of the Muslims in Mindanao - Philippines are following the Shafi'i Madhhab, the degree of authenticity of the Islamic evidence is given with much preference over the opinion of him.

Keywords: Muslims' Inheritance law, Islamic Inheritance law and Succession.

OUTLINE OF CHAPTERS

CHAPTER I BACKGROUND OF THE STUDY

This chapter discusses the background of the study, statement of the problem, research questions, scope and limitations of the study, objective of the study, significance of the study, previous studies, conceptual framework of the study, methodology and research design of the study.

CHAPTER II THE ISLAMIC SYSTEM OF INHERITANCE: AN OVERVIEW

This chapter explains the overview of the Islamic System of Inheritance specifically on significance of acquiring and teaching the Laws of Inheritance, stages of Islamic Inheritance Development Period, events that prompted the revelation of verses in Islamic Law of Inheritance, sources of Islamic Law of Inheritance, Islamic rulings in Inheritance, difference between Mirath and Tarika, and universal rules on Inheritance.

CHAPTER III DETERMINATION OF THE BENEFICIARIES AND THEIR PORTIONS

This chapter determines the beneficiaries and their Portions. This Includes the Classifications of Inheritors, namely: Primary Inheritors (Qur-anic Sharers) and Secondary Inheritors (Residuary Heirs).

CHAPTER IV SETTLEMENT AND PARTITION OF ESTATE

This chapter elucidates the settlement and partition of estate. It specifically describes how to determine the Root of the Problem, The Doctrine of Awl (Decrease of Divisor), The Doctrine of Radd (Increase of Divisor) and rectification of problems and distribution of Inheritance.

CHAPTER V SPECIAL CASES ON ISLAMIC INHERITANCE

This chapter expounds the special cases on Islamic Inheritance. Under the Muslim Code of the Philippines, there are only five (5) special cases that are included in the Book III of Succession, namely: The Case of Unborn Child, The Case of Illegitimate Child, The Case of Acknowledging Person, The Case of Divorced Spouses, and The case of a Missing Person. In this chapter, the researcher subdivided the Special Cases into 3 Groups as follows: First, Group 1 is composed of Special Cases of a Child; Second, Group 2 is composed of Special Cases of Brother/s and Sister/s and Finally, Group 3 is composed of Special Cases due to Certain Circumstances.

CHAPTER VI FINDINGS AND DISCUSSIONS, CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

This chapter includes findings and discussions, conclusion, suggestions and recommendations of the researcher to the said study.